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April 19, 1996

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace; CC Docket No. 96-61

Dear Mr. Caton:

Transmitted herewith on behalf of the State of Alaska are an original and eleven copies of the "Comments of the State of Alaska" in the above-referenced proceeding.

In the event there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

Robert M. Halperin

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Policy and Rules Concerning the	)	
Interstate, Interexchange Marketplace	)	CC Docket No. 96-61
	)	
Implementation of Section 254(g) of the	)	
Communications Act of 1934, as amended	)	

COMMENTS OF THE STATE OF ALASKA

THE STATE OF ALASKA
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Dated: April 19, 1996

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SUMMARY

The Commission has long recognized that geographic rate averaging and rate integration are important policies that promote universal service and assure nondiscriminatory treatment of all Americans, including those residing in Alaska and other off-shore points. Indeed, both policies have long been essential to the integration of Alaskans and residents of other off-shore points into the social and economic fabric of the Nation. That integration will be even more important as we enter the "Information Age."

Recognizing the importance of these policies, Congress has "done the heavy lifting" and now codified and expanded upon them. It has unambiguously required the Commission to promulgate rules implementing geographic rate averaging and rate integration, and making those policies applicable to all telecommunications carriers and generally to all of the interexchange services they offer.

The Commission should not eviscerate Congress's policy decision by forbearing from enforcing geographic rate averaging and rate integration. Among other things, the Commission could not reasonably make the findings now which it would need to make to forebear from enforcement of these requirements, given the lack of experience of how all carriers will implement these requirements in the new competitive environment created by the Telecommunications Act of 1996.

The Commission should not rely on simple certifications to enforce these requirements. Such certifications would not give either Commission staff or other

interested parties sufficient information to determine whether these requirements are being followed.

Like other carriers, AT&T must be required to adhere to the geographic rate averaging and rate integration requirements Congress has codified. That means that AT&T must, among other things, comply with all of the conditions set forth in the resolution of the Alaska Joint Board proceeding, CC Docket No. 83-1376.

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
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COMMENTS OF THE STATE OF ALASKA

The State of Alaska ("the State" or "Alaska") hereby submits these comments in response to sections IV, V, and VI of the Commission's Notice of Proposed Rulemaking, released March 25, 1996 ("Notice"). Geographic rate averaging and rate integration have been -- and continue to be -- essential to integrating Alaskans and others residing in off-shore points into the social and economic fabric of the Nation. The State believes that they must be implemented fully, both because Congress has clearly required them and because they are sound public policies.

I. GEOGRAPHIC RATE AVERAGING

A. Long a Fundamental Commission Policy, Geographic Rate Averaging is Now a Statutory Requirement

Geographic rate averaging has long been a fundamental Commission policy. Although geographic rate averaging has not previously been explicitly required by the Communications Act of 1934, as amended, or FCC rule, the Commission has

made clear that geographic rate averaging furthers the long-standing statutory goal of universal service.[1/] Any carrier seeking to deaverage rates, in contravention of the Commission's "strong commitment to geographic rate averaging"[2/] would have to make a showing that such deaveraged rates were cost justified and otherwise just, reasonable and nondiscriminatory; the Commission has said that such a showing that would "be difficult to meet."[3/]

The Commission has also noted that geographic rate averaging has been almost universally supported. Local exchange carriers, interexchange carriers such as MCI and Sprint, users, and most States have all supported it and told the Commission that rate deaveraging would be discriminatory.[4/]

Congress has now codified this long-standing Commission policy. Both the text of the new statutory provision and the Joint Explanatory Statement of the Committee on Conference make clear that geographic rate averaging has been elevated from a Commission policy to a statutory requirement.

1/ *Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Second Notice of Proposed Rulemaking, CC Docket No. 87-313, 4 FCC Rcd 2873, 3132, 3133 (1989).

2/ *Id.* at 3133.

3/ *Id.*

4/ *Policy and Rules Concerning Rates for Dominant Carriers*, Further Notice of Proposed Rulemaking, CC Docket No. 87-313, 3 FCC Rcd 3195, 3449 (1988).

B. Geographic Rate Averaging Generally Applies to all Interexchange Carriers and all Interexchange Services

Congress has made clear that geographic rate averaging applies to all telecommunications carriers and generally to all of the interexchange telecommunications services they provide. The Telecommunications Act states that the Commission shall adopt rules "to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas."[5/] There is no room in that language for generally exempting certain carriers or certain services.

In this regard, we note that in the market definition section of its Notice, the Commission appears to suggest that geographic rate averaging applies only to residential services. In paragraph 57 of the Notice, the Commission states that "because of geographic rate averaging, a price change in one point-to-point market would require such price changes to be extended to all residential customers." Congress specifically considered -- and rejected -- the notion that geographic rate averaging applies only to residential services. This possibility was raised in drafts of the legislation that circulated in late December 1995. This idea was not accepted by either the Committee on Conference or Congress as a whole. There is no basis for such a limitation.

5/ Telecommunications Act of 1996 § 101 (adding § 254(g)) (emphasis added).

C. The Commission Should Not Consider Forbearing from Enforcing Geographic Rate Averaging Requirements

The Commission asks for comment (at paragraph 69 of the Notice) on whether there may be competitive conditions or other circumstances that could justify Commission forbearance from enforcing the geographic rate averaging requirement. It posits an example of increased competition by carriers which compete only in low cost areas.

The Commission should not consider forbearing from enforcing certain requirements based on hypothetical competition, particularly competition that would be contrary to competition as it has developed to date. The Commission has previously noted that geographic rate averaging exists for several reasons. The costs to carriers of administering deaveraged rates would be great.[6/] Also, new competitors who originally enter high volume, low cost areas have an incentive to expand their service areas as broadly as possible and, when they do so, find that charging geographically averaged rates is the most efficient way to compete.[7/]

Moreover, forbearance is possible under the Telecommunications Act only if the Commission makes the determination that enforcement of the requirement is, among other things, consistent with the public interest.[8/] Congress has "done the

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6/ *MTS and WATS Market Structure*, Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, CC Docket No. 78-72, 81 F.C.C.2d 177, 192 (1980).

7/ *MTS and WATS Market Structure, supra,* 81 F.C.C.2d at 193.

8/ Telecommunications Act at § 401 (adding new § 10 to the Communications Act of 1934, as amended).

heavy lifting" and made the policy decision that geographic rate averaging (and rate integration) are in the public interest. The Commission should not consider at this time whether Congress's clear policy choices were unwise or unnecessary.

Nor does the Commission know how all interexchange carriers will respond to either the new statutory mandate or changes in the competitive environment brought about by Congress. The State has grave doubts concerning whether carriers would adhere to geographic rate averaging and rate integration in the absence of a statutory or regulatory requirement (as demonstrated by the efforts of some carriers, in prior Commission proceedings, to avoid these obligations or claim that these obligations do not apply to them). At the very least, it is clear that, without actual experience under the new statutory scheme, the Commission cannot reasonably make the findings necessary to forbear from enforcing geographic rate averaging (and rate integration).

D. Certifications Would Not Be an Adequate Enforcement Mechanism

The State will be submitting comments by the appropriate date concerning the Commission's proposal to forbear from requiring non-dominant interexchange carriers to file tariffs. The State believes that forbearance from tariff-filing requirements for interexchange services, particularly services aimed at residential and small business customers, is not appropriate under the Telecommunications Act for a variety of reasons.

One -- but by no means the only -- important reason why the State believes forbearance from tariff-filing requirements is not appropriate is that tariff filing is

the best way to enforce the geographic rate averaging (and rate integration) requirements of the Telecommunications Act. As noted above, Congress has elevated Commission policies of geographic rate averaging (and rate integration) into statutory requirements and has thus stated that those are important public interest policies. The Commission should not eviscerate the statute by forbearing from enforcing tariff-filing requirements, which are the most effective way of enforcing geographic rate averaging (and rate integration).

Also, as noted above, Congress has also made other changes to the competitive marketplace. The Commission does not yet have any experience concerning how carriers will implement geographic rate averaging (and rate integration) requirements in the new environment. It simply does not make sense for the Commission to gut the enforcement of new statutory requirements before it has any experience with how all interexchange carriers generally will act in that new environment.

A simple certification will not provide Commission staff or interested parties sufficient information to validate whether these requirements are being satisfied. Those who would be victimized by a carrier's failure to adhere to geographic rate averaging (and rate integration) requirements would not be in a position to challenge the certification. They would lack both the information and resources to do so.

E. Failure to Offer Pricing Plans Offered Elsewhere Would Constitute Rate Deaveraging

The Commission also requests comment (at paragraph 72 of the Notice) on whether a carrier's failure to offer a discount plan in all areas served amounts to geographic rate deaveraging. The State believes that principles of geographic rate averaging generally require that discount plans be offered throughout a carrier's service area. Otherwise, as discount plans become more common, geographic rate averaging will become an empty promise.

Indeed, the Commission has already decided that optional calling plans offered by interexchange carriers must be made available throughout the carriers' service area, and not contain geographically deaveraged rates.[9/] It noted that AT&T had stated an intention to offer all of its anticipated optional calling plans on a nation-wide basis, thus satisfying geographic rate averaging requirements. Given Congress's codification of geographic rate averaging, there is certainly no reason to alter that requirement now.

F. AT&T's Three-Year Commitment Regarding Geographic Rate Averaging is Now Effectively Permanent

The Commission notes that AT&T made certain "voluntary commitments" regarding geographic rate averaging in connection with the Commission's decision to treat AT&T as a nondominant carrier in the domestic interexchange services

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9/ *Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans,* Memorandum Opinion & Order, CC Docket No. 84-1235, 59 RR 2d 70, 89-90 (1985).

market, and requests comment on its tentative conclusion that AT&T should now be relieved of those commitments. Notice at ¶ 73. Essentially, AT&T committed, for three years, to continue to offer interstate, residential, direct dial interexchange services at geographically averaged rates, and to give five-days advance notice of any tariff filing that departed from its traditional approach to geographic rate averaging for those services.

Congress has now decided that all interexchange carriers must generally offer all interexchange services at geographically averaged rates. Thus, AT&T cannot now seek to provide services that would have triggered its five-day notice commitment. Congress's requirements are thus greater than AT&T's "voluntary commitments" both in terms of the services and the time period to which the "voluntary commitments" applied. The question of whether AT&T's "voluntary commitments" continue in effect, therefore, does not appear significant. The fact is that AT&T and all of its interexchange competitors generally may not offer interexchange services at geographically deaveraged rates regardless of how much advance notice is given.

II. RATE INTEGRATION

Congress has also codified the Commission's long standing rate integration policy. That policy provides that "a rate structure which uses different ratemaking methods to determine the rates which different users pay for comparable services is inconsistent with the national policy expressed in Section

202(a)" of the Communications Act of 1934, as amended.[10/] As applied to Alaska, Hawaii and other off-shore points, this policy means that rates for calls to and from these locations must be "integrated" into the rate-setting mechanisms carriers use for the rest of the United States.[11/] Thus, without rate integration, residents of Alaska and other off-shore points would face significant increases in interexchange services rates, would be the victims of economic discrimination and would be denied the fair access to interexchange telecommunications services that is necessary for them to be part of the "Information Age."

A. Rate Integration Applies to all Interexchange Carriers and all Interexchange Services

Here, too, Congress has "done the heavy lifting." The task facing the Commission is simply to promulgate rules Congress has clearly required. The Telecommunications Act unambiguously states that Commission rules "shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State."[12/] On its face, the statute provides that rate integration applies to all interexchange carriers and all of its interexchange services.

10/ *MTS and WATS Market Structure, supra,* 81 F.C.C.2d at 192.

11/ *See Integration of Rates and Services for the Provision of Communications by Authorized Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands*, Memorandum Opinion and Order, 9 FCC Rcd 3023 & n.2 (1994).

12/ Telecommunications Act of 1996 at § 101 (adding new § 254(g)).

B. The Commission Should Not Forbear From Enforcing Rate Integration

The State will not repeat the comments set forth above in the context of geographic rate averaging with respect to forbearance and tariff filing. The comments set forth above in the context of geographic rate averaging apply fully to rate integration as well.

C. Far from Superseding them, Congress Has Codified AT&T's "Voluntary Commitments"

The Commission tentatively concluded that AT&T should be relieved of the "voluntary commitments" regarding rate integration it made to obtain non-dominant carrier status on the basis that those commitments have been superseded by Congressional action. AT&T did not, however commit to anything other than comply with the Commission's rate integration policy. Congress did not supersede that policy; it codified it. AT&T cannot avoid the Commission's rate integration policy and statutory requirements by converting them to conditional "voluntary commitments". AT&T must, therefore, continue to comply with all conditions set forth in the Commission's rate integration dockets, including, but not limited to the Commission's adoption, with modifications, of the Alaska Joint Board's *Final Recommended Decision* in CC Docket No. 83-1376.[13/]

13/ *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands, supra.*

III. CONCLUSION

Congress has required the Commission to adopt and enforce the rules required by the Telecommunications Act concerning geographic rate averaging and rate integration. It should do so, both because Congress has so required, and because it is sound public policy. Geographic rate averaging and rate integration are essential to the integration of Alaskans and the residents of other off-shore points into the social and economic fabric of the Nation.

Respectfully submitted,

THE STATE OF ALASKA

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April 19, 1996

CERTIFICATE OF SERVICE

I hereby certify on behalf of The State of Alaska that a true and correct copy of the foregoing "Comments of the State of Alaska" was served by hand delivery, this 19th day of April, 1996, upon the following counsel of record:

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